

FORM FOR USE IN APPLICATIONS

FOR HABEAS CORPUS UNDER 28 U.S.C. §2254

JOHN LAMAR Mitchell

Name

AIS # 220771

Prison Number

DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT OF ALA

JAN 24 A 9:34

Kilby Correctional FacilityP.O. Box 150 Mount Meigs, AL 36057

Place of Confinement

United States District Court Middle District of AlabamaCase No. 2:08-CV-51-MHT
(To be supplied by Clerk of U. S. District Court)JOHN Mitchell LAMAR, PETITIONER
(Full name) (Include name under which you were convicted)warden cummins, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF Alabama, Troy King, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- . (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8-1/2 x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8-1/2 x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is P. O. Box 711, Montgomery, Alabama 36101
-
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

*If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.

PETITION

1. Name and location of court which entered the judgment of conviction under attack CLEBURNE COUNTY CIRCUIT COURT HEFLIN Alabama
120 VICKERY ST. Room 202 HEFLIN, AL 36264
 2. Date of judgment of conviction 8-22-2005
 3. Length of sentence 20 Years Sentencing Judge Samuel montt
 4. Nature of offense or offenses for which you were convicted: probation
Revocation - SPiT-Sentence
-
5. What was your plea? (check one)
- (a) Not guilty ()
- (b) Guilty ()
- (c) Nolo contendere ()
- If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

17A

6. Kind of trial: (Check one)
 (a) Jury ()
 (b) Judge only () PROBATION REVOCATION
7. Did you testify at the trial? Yes () No () was NOT allowed
8. Did you appeal from the judgment of conviction? Yes () No ()
9. If you did appeal, answer the following:
 (a) Name of court was NOT Allowed
 (b) Result _____
 (c) Date of result _____
 If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details:
N/A
10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes () No ()
11. If your answer to 10 was "yes", give the following information:
 (a) (1) Name of court Cleburne County Circuit Court
 (2) Nature of proceeding Rule 32 post-conviction petition
 (3) Grounds raised Failure to advise defendant of his right to request counsel, complete denial of counsel, inadequate order on revocation, denied the right to present witnesses, Denied the right to appeal, complete denial of due process, the court violating the rules of criminal procedure which are mandatory.
 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()
 (5) Result none
 (6) Date of result none
 (b) As to any second petition, application or motion give the same information:
 (1) Name of court Alabama Supreme Court
 (2) Nature of proceeding WIT OF MANDAMUS ASKING FOR TRANSCRIBED RECORDS OF REVOCATION HEARING
 (3) Grounds raised RIGHT OF INDIGENT PRISONER TO HAVE HIS TRANSCRIBED RECORDS TO BASE HIS APPEAL.
 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()
 (5) Result none
 (6) Date of result none

(c) As to any third petition, application or motion, give the same information:

- (1) Name of court Alabama Supreme Court
 - (2) Nature of proceeding WRIT OF MANDAMUS DIRECTING HIGHER COURT TO ORDER CIRCUIT COURT TO RULE ON MERITS OF PETITION
 - (3) Grounds raised RIGHT TO HAVE THE MERITS OF RULE 32 POST-CONVICTION PETITION RULED ON WHICH IS STILL UNREFINED. RIGHT TO MEANINGFULL ACCESS TO THE COURTS
-
-

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No ()

(5) Result None

(6) Date of result None

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

- (1) First petition, etc. Yes () No ()
- (2) Second petition, etc. Yes () No ()
- (3) Third petition, etc. Yes () No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: ON THE RULE 32 POST-CONVICTION PETITION THERE HAS BEEN NO RULING IN OVER TWO YEARS. ON THE FIRST WRIT OF MANDAMUS IT HAS BEEN OVER A YEAR, THE SECOND WRIT OF MANDAMUS 6 MONTHS. THE STATE WILL NOT RULE ON THE PETITION THAT CLEARLY HAS MERIT, SO I CANNOT APPEAL. WITHOUT THE STATE RULING I CANNOT EXHAUST MY STATE REMEDIES.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Failing to advise Right TO Counsel

Supporting FACTS (tell your story briefly without citing cases or law): ON 4-04-2005 AT THE BEGINNING OF THE REVOCATION HEARING, RANDY BROOKS APPROACHED THE BENCH AND ASKED TO BE APPOINTED TO REPRESENT ME AND AT THAT POINT THE JUDGE SAID "NO HE DONI NEED A LAWYER THIS IS CUT AND DRY."
AND THEN WENT FORWARD WITH THE HEARING, AT NO POINT FROM THEN ON DID THE COURT ADVISE ME OF MY RIGHT TO COUNSEL, ONLY THAT I DID NOT NEED A LAWYER, AND ONLY DENY COUNSEL.

B. Ground two: Complete Denial of Counsel

Supporting FACTS (tell your story briefly without citing cases or law): ON 4-04-2005 I WAS DENIED COUNSEL AND THEN AGAIN AFTER I FILED AN AFFIDAVIT OF SUBSTANTIAL HARSHSHIP AND REQUEST FOR COURT APPOINTED ATTORNEY, ON 4-14-05, ON 5-06-2005 THE REQUEST FOR COURT APPOINTED ATTORNEY WAS DENIED, NO REASON WAS GIVEN. I DID NOT HAVE COUNSEL TO PRACTICE MY RIGHTS AND SEVERAL OF MY RIGHTS WERE VIOLATED, THE SAME RIGHTS THAT OTHER ALABAMA DEFENDANTS ARE GUARANTEED, I WAS DENIED.

C. Ground three: Right to Due Process was denied and equal protection of the law.

Supporting FACTS (tell your story briefly without citing cases or law): my probation was revoked while I was still serving my prison term. It was revoked for violating a term or condition, even though I had never received any written term or conditions. I was denied counsel, was not allowed to present witnesses even though I had requested them, was not allowed to cross-examine the state's witness who talked in my favor, was convicted without a proper charge, convicted upon incompetent evidence, evidence that was irrelevant to the issue and that was also inadmissible. I was also denied the right to appeal. The court also did not follow the rules of court, the same rules that apply to all other Alabama defendants.

D. Ground four: Inadequate written order on Revocation,
And no right to Appeal.

Supporting FACTS (tell your story briefly without citing cases of law): The ORDER on Revocation showed NO evidence of A violation OF A TERM OR CONDITION OF PROBATION. NO NUMBER OR TERM OR CONDITION THAT WAS IN VIOLATION. IT STATES THAT I VIOLATED THE RULES AND REGULATIONS OF THE DEPARTMENT OF CORRECTIONS, AND THAT WAS NEVER A TERM OR CONDITION OF PROBATION. IN TERMS AND CONDITIONS WAS EVER GIVEN OR IMPOSED. I WAS NOT GIVEN THE RIGHT TO APPEAL, AND EVEN IF I HAD BEEN GIVEN AN APPEAL WHAT GOOD WOULD IT HAVE DONE IF I COULD NOT EVEN DEFEND AGAINST AN IMPROPER REVOCATION. I NEEDED COUNSEL TO PROTECT MY RIGHTS TO DUE PROCESS WHEN THE COURT ABUSED ITS DISCRETION.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them:

W.H.A.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes () No ()

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
(a) At preliminary hearing *denied counsel*

(a) At preliminary hearing denied counsel

(b) At arraignment and plea Denied counsel

(c) At trial Denied counsel

(d) At sentencing Denied counsel

(e) On appeal Denied counsel

(f) In any post-conviction proceeding Denied counsel

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____
None

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes () No ()

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes () No ()
(a) If so, give name and location of court which imposed sentence to be served in the future: NA
(b) And give date and length of sentence to be served in the future: NA
(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes () No () NA

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____.
(date)

Jehor Mitchell
Signature of Petitioner

JOHN LAMAR Mitchell AIS# 220771
H-DORM -Bed- 2A
Kilby CORRECTIONAL Facility
P.O. Box 150
Mount Meigs, AL.
36059

LEGAL MAIL

"This correspondence is forwarded from an Alabama State Prison. The contents have not been evaluated, and the Alabama Department of Corrections is not responsible for the substance or content of the enclosed communication."

CLERK OF THE UNITED STATES DISTRICT COURT
P.O. BOX 711,
Montgomery, Alabama.
36101

